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MEMORANDUM

To: Heads of Fire Departments, Building Commissioners & Inspectors

From: Stephen D. Coan, State Fire Marshal
Thomas G. Gatzunis, Commissioner DPS

Date: February 1, 2009

Subject: Use of Churches as Shelters

This is to advise heads of fire departments and building departments of issues regarding the housing of homeless people in churches throughout the Commonwealth.

Several legal questions have been raised by network advocates regarding the imposition of safety codes as effects the requirements of sheltering within churches. The courts have previously opined that public safety requirements do not violate separation of church and state. (See, Faith Assembly of God of South Dennis and Hyannis, Inc. v. State Building Code Commission, 11 Mass. App. Ct. 333, 416 N.E. 2d 228) Church operations must comply with public safety requirements and satisfy requirements of the state building code, if the requirements are aimed at public safety and not at interfering with the religious practice. Several fire chiefs and building commissioners have asked for guidance and as such, this advisory is issued.

A church being utilized for overnight accommodations is considered a change of use under requirements of the State Building Code. Therefore, if fire department personnel become aware that a church or other building is being used as a shelter, a report shall be made to the local building official in accordance with M.G.L. c. 148 §28A, and 527 CMR 1.06(5). The only time enforcement authority will rest with the head of the fire department is if the community has adopted M.G.L. c. 148 §26H. The head of the fire department may enforce the provisions of this section regarding sprinklers.

Upon receipt of the report, the building official should inspect the premises to determine whether the building is zoned for residential use and whether a violation(s) of the zoning laws have

occurred. If the premises are deemed to meet zoning, then a secondary determination of compliance with the State Building Code is necessary. Except for declared emergencies defined by Section 110 of the State Building Code, the code does not establish provisions for temporary residential uses of this nature. Therefore, if a church is being used for residential purposes, a change of use building permit must be applied for under 3402.1.1 of the code. Additionally, the code requires an investigation and evaluation to be performed relative to existing building conditions as well as conditions relating to the proposed work or change in use. The evaluation should identify any code violations in sufficient detail to ascertain the effects of the proposed work, or change in use relative to egress, fire protection, energy conservation systems, light and ventilation systems of the space under consideration and, where necessary, the entire structure.

Upon completion of the inspection and issuance of the resultant Chapter 34 evaluation report, the building official will indicate if the facility is in compliance with the State Building Code, or will provide the a list of areas of non-compliance with the State Building Code. Remedial action shall take place prior to the issuance of a Certificate of Occupancy. If an appeal is filed with the State Building Code Appeals Board, a stay is granted permitting the continued use of the building until the appeal is heard, and a decision rendered, unless that board determines there is an immediate threat to public safety.

If you have any questions please contact the DFS Code Compliance and Enforcement Unit at (978) 567-3375, or in Western Massachusetts at (413) 587-3181 or appropriate DPS district state inspector.